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In the Supreme Court of the United States

OCTOBER TERM, 1980

FELICE GELMAN, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, RESPONDENT

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

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September 12, 1980

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit properly upheld the Federal Election Commission's determination that candidate Lyndon LaRouche did not reestablish his eligibility to receive federal matching funds pursuant to the Presidential Primary Matching Payment Account Act by receiving 11.4% of the total votes cast in the May 20, 1980, Michigan primary.

Whether the court of appeals properly found that petitioners' challenge to the Commission's determination as a deprivation of first and fifth amendment rights was without merit.

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent Federal Election Commission ("Commission" or "FEC") requests that the petition for writ of certiorari filed by petitioners to review the judgment of the United States Court of Appeals for the District of Columbia Circuit be denied.

OPINION BELOW

The opinion of the court of appeals, which is not yet officially reported, appears in the appendix to petitioners' brief ("Pet. App.") at 1a.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 1980. The petition for a writ of certiorari was filed on August 12, 1980. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-42, is reprinted in Appendix A, *infra*. Pertinent sections of the Michigan Compiled Laws appear in Appendix B, *infra*.

COUNTERSTATEMENT OF THE CASE

Lyndon LaRouche was a candidate for the 1980 nomination of the Democratic party for the office of President of the United States, and Citizens for LaRouche, Inc. ("CFL") is his principal campaign committee.

On December 18, 1979, the Commission determined that Lyndon LaRouche had established his eligibility to receive primary matching fund payments to defray qualified campaign expenses in connection with his 1980 campaign for the Democratic nomination. *See* 26 U.S.C. § 9033(b).[1] Subsequent to this initial

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[1] The Presidential Primary Matching Payment Account Act ("the Act") establishes a system for funding of presidential primary campaigns based upon both contributor support and popular vote support. *See* 26 U.S.C. § 9033(b)(3), App. B at 5a (threshold eligibility requirements); 26 U.S.C. § 9034, App. B at 7a (matching payments for contributions received); 26 U.S.C. § 9033(c)(1)(B), App. B at 6a (termination of funding if the candidate receives less than 10% of the popular vote in two consecutive primaries); and 26 U.S.C. § 9033(c)(4)(B), App. B at 7a (reestablishment of eligibility to receive payments only if the candidate receives 20% or more of the popular vote in a subsequent primary).

determination of eligibility, the Commission certified for payment funds totalling $526,253.19 to Lyndon LaRouche.[2] Mr. LaRouche's name appeared on the Democratic ballot in the New Hampshire (February 26), Georgia (March 11) and Illinois (March 18) primaries.[3]

However, based upon the final vote tallies in New Hampshire and Illinois, where Mr. LaRouche received 2.1% and 2% of the votes cast respectively, the Commission, on March 25, 1980, determined that, as of April 17, 1980, Lyndon LaRouche would no longer be eligible to receive matching fund payments.[4] 26 U.S.C. § 9033(c)(1)(B). Thereafter, presidential primaries were held in the following states wherein Mr. LaRouche received the vote percentages listed below: Connecticut 3.0%, Wisconsin 1.0%, District of Columbia 1.4%, Tennessee .3%, Maryland .9%,

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[2] This figure represents the total amount certified for payment as of July 31, 1980, the last date on which expenses were submitted by candidate LaRouche for certification.

[3] Mr. LaRouche's name did not appear on the ballot in the Massachusetts (March 4), Vermont (March 4), Alabama (March 11), Florida (March 11) or Puerto Rico (March 16) primaries. Although Mr. LaRouche's name appeared on the Georgia ballot, wherein he received .1% of the vote (570 votes), the candidate had timely filed a letter to the Commission certifying he would not be actively campaigning in the Georgia primary. *See* 26 U.S.C. § 9033(c)(1)(B) and 11 C.F.R. § 9033.5(b).

[4] Mr. LaRouche continues, however, to receive matching fund payments for qualified campaign expenses incurred prior to April 17, 1980 and for "winding down" costs of the campaign. 26 U.S.C. § 9033(c)(2), 11 C.F.R. § 9034.4(c). *See* note 1 *supra*.

Nebraska .8%, California 2.4%, New Jersey 2.6%, New Mexico 3.0%, Ohio 3.0%, Rhode Island 3.1%.

The State of Michigan conducted its state-wide presidential primary on May 20, 1980. *See* 1954 Mich. Pub. Acts 116; Mich. Comp. Laws Ann. ("MCLA") § 168.611 *et seq.*, App. B *infra*.[5] The specific sections of the law relating to the presidential primary are contained in §§ 613-620, as amended by 1972 Mich. Pub. Acts 60 and by 1975 Mich. Pub. Acts 325; MCLA § 168.613 through § 168.620, App. B, *infra*.[6] The results of this contest were as follows:

Lyndon LaRouche	8,948	or 11.4%
Governor Edmund G. Brown, Jr.	23,043	or 29.4%
Write-Ins/Scattering	10,048	or 12.8%
Uncommitted	36,385	or 46.4%
TOTAL	78,424	100.0%

[5] Democratic primaries were also held during this time in Kansas, Louisiana, Pennsylvania, Indiana, North Carolina, Oregon, Arkansas, Idaho, Kentucky, Nevada, Montana, South Dakota and West Virginia. Mr. LaRouche's name did not appear on the ballot in any of these primaries. A Democratic primary was held in New York in which an "uncommitted" slot for Mr. LaRouche initially was to appear on the ballot. However, this uncommitted slot was declared invalid by the New York State Board of Elections, due to an insufficient number of valid signatures on the petition to obtain such a slot, prior to the New York primary.

[6] The statutory presidential primary in Michigan was an open primary in that any individual could vote for the candidates of any party, regardless of publicly stated party affiliation. In addition, Michigan law requires that delegates to the national convention be allocated to the candidates, including "uncommitted," based on the popular vote received in the presidential primary. MCLA §§ 168.618, 168.619, 168.620, App. B at 21a, 22a, 23a. *See also Ferency* v. *Austin*, No. 80-193 CA 5 (W.D. Mich. April 21, 1980), *appeal docketed*, No. 80-1382 (6th Cir. May 22, 1980).

Having received 8,948 votes in the Michigan presidential primary, Mr. LaRouche requested that the Commission determine that he had reestablished his eligibility to receive matching funds. However, on May 29, 1980, the Commission determined that Mr. LaRouche had not reestablished his eligibility as required by § 9033(c)(4)(B) and so notified CFL.

On June 10, 1980, petitioner CFL filed the action below pursuant to 26 U.S.C. § 9041(a) seeking review of the Commission's determination. The court, by order dated June 19, 1980, denied CFL's request for a stay, and set an expedited schedule for briefing and review of this case. On July 14, 1980, oral argument was heard and on July 18, 1980, the court below affirmed the Commission's decision.

REASONS WHY THE WRIT SHOULD BE DENIED

The court below correctly concluded that the Act requires receipt of 20% of the total vote cast in a party's primary election to reestablish eligibility to receive matching fund payments and that the Commission's decision in this matter did not violate first or fifth amendment rights of petitioners. This decision does not conflict with any decision either of another court of appeals or of this Court. Further review is not warranted.

1. Having become ineligible to receive matching funds by failing to obtain even more than 2% of the vote in two consecutive primaries, 26 U.S.C. § 9033(c)(1)(B), petitioners ask this Court to require the Commission to certify Mr. LaRouche's reeligibility on

the basis of the Michigan primary results wherein he received 11.4% of the vote. 26 U.S.C. § 9033(c)(4)(B).

Section 9033(c)(4)(B) provides that once a candidate has been found ineligible to receive matching fund payments pursuant to § 9033(c)(1)(B) he or she can reestablish eligibility only by receiving "20 percent or more of the total number of votes cast for candidates of the same party" in a subsequent primary election. Petitioners urge a construction of the term "candidate" as used in § 9033(c)(4)(B) which would require that Mr. LaRouche's 11.4% of the total votes cast be considered somewhere between 47.18% and 100%, depending upon whether the write-ins, uncommitted and Governor Brown were "candidates," as defined by petitioners. The court below properly rejected petitioners' interpretation, stating:

> Petitioners' construction ignores the fact that the word "candidate" does not appear in the statute in a vacuum. The complete phrase to be construed and applied by the FEC is "candidate of the same party in a primary election." Petitioners' narrow focus on the word "candidate," to the exclusion of the phrase within which that word appears, results in a strained and artificial construction that is at odds with the Act's underlying concern that federal matching funds should go only to those candidates who have demonstated at least minimal public support for their candidacies.

Pet. App. at 8a.

A review of the legislative history of the 20% rule as set forth at 26 U.S.C. § 9033(c)(4)(B) reveals an unambiguous intent by Congress to ensure that candidates demonstrate popular vote support prior to receiving or continuing to receive federal funds. *See* 122 Cong. Rec. 7173-76 (1976); 122 Cong. Rec. 7923 (1976) (remarks of Sen. Bentsen); H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 75-76 (1976). *See also Committee to Elect Lyndon LaRouche* v. *Federal Election Commission*, 613 F.2d 834, 841 (D.C. Cir. 1979), *cert. denied*, 100 S.Ct. 1019 (Feb. 19, 1980). Senator Taft stated in Congressional debate that the amendments requiring continued popular vote support were offered to protect the integrity of the matching fund program by terminating payments "to those who show a lack of support," and that passage of the amendment would express "the sense of Congress that the public financing program is not to support campaigns that are going nowhere fast." 122 Cong. Rec. 7173, 7174 (1976). Senator Clark agreed that such an objective was commendable, because it would prevent federal tax money from being paid "to candidates who were not serious candidates or who had proven through their own primary election efforts that they were not able to attract votes." 122 Cong. Rec. 7175 (1976). *See also* 122 Cong. Rec. 12,201 (1976).

If petitioner's interpretation of 26 U.S.C. § 9033(c)(4)(B) were accepted, however, the clear Congressional objective to fund only candidates with some modicum of public support would be negatived.

Lyndon LaRouche would be certified as reeligible to receive matching funds, even though his primary election efforts indicate that he has been unable to attract what Congress deemed to be the necessary showing of voter support. Thus, the court below concluded:

> Petitioners' sterile reading of the statute ignores Congress' practical purpose and exalts literalness over common sense. Out of 78,424 votes cast on the Democratic side of the Michigan primary ballot, 88.6 percent were not cast for Mr. LaRouche. Through a narrow reading of the Act, Mr. LaRouche would have us conclude that 88.6 percent nonsupport translates into 41.4 percent support. No amount of statutory construction can reach such an illogical conclusion.

Pet. App. at 9a.

When the literal interpretation of a statutory provision leads to a result that is unreasonable and defeats the manifest purpose of the statute, then that literal interpretation is properly rejected. *United States* v. *American Trucking Associations*, 310 U.S. 534, 544 (1940); *Markham* v. *Cabell*, 326 U.S. 404, 409 (1945); *Wilderness Society* v. *Morton*, 479 F.2d 842, 855-56 (1973) (en banc), *cert. denied*, 411 U.S. 917 (1973).

2. As an alternative, petitioner argues that Congress's requirement that candidates demonstrate popular support to continue receiving primary matching funds is unconstitutional in violation of the first and fifth amendments. In effect, petitioner seeks the

right to receive public monies without having to demonstrate that such funds are going to support a serious, viable candidacy for the presidential nomination of a national political party. The court below properly rejected this argument, Pet. App. at 10a, applying this Court's reasoning in *Buckley* v. *Valeo*:

> Congress' intent in not funding hopeless candidates with large sums of public money necessarily justifies the withholding of public assistance from candidates without significant public support. Thus, Congress may legitimately require "some preliminary showing of a significant modicum of support" as an eligibility requirement for public funds. This requirement also serves the important public interest against providing artificial incentives to "splintered parties and unrestrained factionalism."

424 U.S. 1, 96 (1976) (Citations omitted).

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Chapter 96—Presidential Primary Matching Payment Account

§ 9031. Short title

This chapter may be cited as the "Presidential Primary Matching Payment Account Act."

§ 9032. Definitions

For the purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he—

(A) takes the action necessary under the law of a State to qualify himself for nomination for election,

(B) receives contributions or incurs qualified campaign expenses, or

(C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf.

The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 437c(a)(1) of title 2.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made, for the purpose of influencing the result of a primary election.

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose,

(C) means funds received by a political committee which are transferred to that committee from another committee, and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge, but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate, or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of—

(A) the date such party nominates its candidates for the office of President of the United States, or

(B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national

nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

> (A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and
>
> (B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

§ 9033. Eligibility for payments

(a) *Conditions.* To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,

(2) agree to keep and furnish to the Commission any records, books, and other information it may request, and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) *Expense limitation; declaration of intent; minimum contributions.* To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035.

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States,

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

(c) *Termination of payments.*

(1) *General rule.* Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) *Qualified campaign expenses; payments to Secretary.* Any candidate who is ineligible under paragraph (1) to receive any payments under section 9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) *Calculation of voting percentage.* For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary

election conducted on such date in which he received the greatest percentage vote.

(4) *Reestablishment of eligibility.*

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

§ 9034. Entitlement of eligible candidates to payments

(a) *In general.* Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the

presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds $250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) *Limitations.* The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2.

§ 9035. Qualified campaign expense limitations

(a) *Expenditure limitations.* No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitations applicable under section 441(a)(b)(1)(A) of title 2, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, $50,000.

(b) *Definition of immediate family.* For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

§ 9036. Certification by Commission

(a) *Initial certifications.* Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) *Finality of determinations.* Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

§ 9037. Payments to eligible candidates

(a) Establishment of account. The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(b)(3) are available for such payments.

(b) *Payments from the matching payment account.* Upon receipt of a certification from the Com-

mission under section 9036, but not before the beginning of the matching payment period, the Secretary shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

§ 9038. Examinations and audits; repayments

(a) *Examinations and audits.* After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) *Deposit of repayments.* All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

§ 9039. Reports to Congress; regulations

(a) *Reports.* The Commission shall, as soon as practicable after each matching payment period, sub-

mit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees,

(2) the amounts certified by it under section 9036 for payment to each eligible candidate, and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) *Regulations, etc.* The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) *Review of regulations.*

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

§ 9040. Participation by Commission in judicial proceedings

(a) *Appearance by counsel.* The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the

competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) *Recovery of certain payments.* The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038.

(c) *Injunctive relief.* The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) *Appeal.* The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

§ 9041. Judicial review

(a) *Review of agency action by the Commission.* Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) *Review procedures.* The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551 (13) of title 5, United States Code, by the Commission.

§ 9042. Criminal penalties

(a) *Excess campaign expenses.* Any person who violates the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

(b) *Unlawful use of payments.*

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray qualified campaign expenses, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(c) *False statements, etc.*

(1) It is unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information

to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(d) *Kickbacks and illegal payments.*

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

APPENDIX B

PERTINENT MICHIGAN STATUTES

(611) Election of delegates to national convention and presidential electors. [168.611; MSA 6.1611]

Sec. 611. In the year 1956, and each fourth year thereafter, delegates of each political party who were elected to the last prior fall county convention shall reconvene in a county convention. Such county conventions shall, when so convened, elect delegates to a state convention. The number of delegates so elected shall be the same as the number elected to the last prior spring state convention. Said county conventions shall be held at least 90 days prior to the time set for the holding of the national convention of its political party. All county conventions shall be held on the same day and time. The time and place shall be fixed by the state central committee. A state convention shall be held in the year 1956, and each fourth year thereafter, composed of delegates so elected by the respective county conventions which shall be held at least 60 days prior to the holding of the national convention of its political party. On the date and prior to the state convention and at the place designated for the state convention, the delegates so elected by the respective county conventions shall convene in caucus in congressional districts and the delegates of each congressional district shall elect 2 district delegates to the national convention of its political party, and shall report to the state convention the names of the delegates so elected at each congressional caucus. The time for each of said caucuses shall be designated by the chairman of the state central committee. The state convention shall convene and shall elect the balance of the delegates

to the national convention of its political party to which it is entitled under the call of the national convention as delegates-at-large. The convention shall likewise elect presidential electors in the manner now provided by law. Delegates chosen by the respective congressional districts and reported to the convention and delegates-at-large elected at the state convention shall be certified as the state delegation of such political party to its national convention by the chairman and secretary of the state convention. Such county and state conventions shall be conducted in accordance with the law now governing spring and fall county and state conventions.

(612) Precinct or convention delegate; age. [168.612; MSA 6.1612]

Sec. 612. Any person of the age of 18 years or older shall be eligible to be a candidate for election as a precinct delegate or be selected as a delegate to the state or national convention of any political party.

(613) Presidential primary; time, parties to participate, election of delegates, times. [168.612; MSA 6.1613] Public Act 325 (75) amended.

Sec. 613. On the third Tuesday in May, in each presidential election year, a statewide presidential primary election shall be conducted in accordance with this act for each political party that received greater than 5% of the total vote cast nationwide in the last presidential election. In each presidential election year delegates to county conventions shall be elected at the presidential primary election, or at the August primary election, whichever is specified by the rules of each political party filed with the secretary of state by January 1 of each presidential election

year, and shall serve until a successor is elected and qualified.

(614) C.L. 168.614 Same; lists of potential candidates; time; notice. Public Act 60 (72), added section, I.E.

Sec. 614. (1) By 4 p.m. on the first Friday in March in each presidential election year, the secretary of state shall issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each party's nomination by the political parties for which a presidential primary election will be held pursuant to section 613.

(2) By 4 p.m. of the Tuesday following the first Friday in March in each presidential election year, the state central committee of each political party for which a presidential primary election will be held pursuant to section 613 shall file with the secretary of state a list of individuals whom they consider to be potential presidential candidates for their party.

(3) Forthwith after the issuance of his list and then again after receipt of any names from the various state central committees, the secretary of state shall notify each potential presidential candidate so listed of the provisions of this act relating to the presidential primary election.

(615) C.L. 168.615 Same; printing of ballots; affidavit of candidacy; withdrawal. Public Act 60 (72), added section, I.E.

Sec. 615. (1) The secretary of state shall cause to be printed on the ballots for the presidential primary under the appropriate political party the name of each presidential candidate who has provided the secretary of state with an affidavit indicating his party preference and willingness to have his name

printed on the ballot no later than 4 p.m. of the third Friday in March in each presidential election year. A presidential candidate may withdraw his name from the ballot by notifying the secretary of state no later than 4 p.m. of the third Friday in March in each presidential year. The names of the presidential candidates shall be rotated on the ballot. The ballot shall contain a space for the elector to vote "uncommitted".

Candidate not on list; nominating petitions; affidavit of candidacy; validity of petitions.

(2) An individual who is not listed as a potential presidential candidate in accordance with section 614 shall have his name printed on the ballot and for the purposes of this act, shall be considered in the same maner as all presidential candidates listed, upon presentation to the secretary of state, no later than 4 p.m. of the third Friday in March, nominating petitions for that individual along with an affidavit signed by the individual indicating his party preference and willingness to have his name printed on the ballot.

The nominating petitions shall contain the valid signatures of registered qualified electors whose number is at least equal to ½ of 1% of the total vote cast in the state at the previous presidential election for the presidential candidate of the political party of the individual. Signatures shall be obtained starting on January 1 except that in 1972, signatures shall be obtained starting on the effective date of this section. The petitions shall conform to the requirements of this act.

(616) C.L. 168.616 Same; certificate of results. Public Act 60 (72), added section, I.E.

Sec. 616. The secretary of state shall certify the statewide and congressional district results of the presidential primary to the chairman of the state central committee of each participating political party.

168.617 Repealed, 1975, p. 1166, Act 325, Imd. Eff. Jan. 9, 1976.

The repealed section pertained to time and place for holding county convention and to election of delegates to state convention.

(618) Delegates to national convention; certification, allotment, qualifications and procedures. [168.618; MSA 6.1618] Public Act 325 (75) amended.

Sec. 618. The allocation of all delegates and alternates to a national convention shall be made by the state central committee of each party in accordance with the provisions of this act and shall be certified to the secretary of state. A minimum of ⅔ of the state's delegates shall be allocated to congressional districts and at least 2 delegates shall be allocated to each district. All delegates shall be registered electors of this state. Delegates elected from congressional districts shall be registered electors of those districts. All national convention delegates shall be chosen according to procedures and any other qualifications, as long as they are not inconsistent with those in this act, as may be established by the state central committee of that political party. The procedures and qualifications may include, but are not necessarily limited to guarantees that discrimination on the basis of race, creed, color, sex, age, national origin, or economic status does not occur.

(619) National convention; delegates, selection, voting requirements, vacancy. [168.619; MSA 6.1619] Public Act 325 (75) amended.

Sec. 619. (1) National convention delegates elected pursuant to this act shall be elected on a basis that insures that the proportion of the total national convention delegation that is uncommitted or is committed to each presidential candidate equals as near as is practicable, the proportion of the popular vote that was cast as uncommitted or for each respective presidential candidate of the particular political party's total popular vote. The determination of these proportions shall only include the votes cast as uncommitted, or for a particular presidential candidate, if the total vote cast is uncommitted, or for that particular presidential candidate, equals at least 5% of the total vote cast for all presidential candidates or as uncommitted for that political party.

(2) All the national convention delegates shall be bound to vote for the presidential candidate for whom they designated commitment, if any, when they were elected as national delegates, until the end of the second ballot at the national convention, until released from that commitment by the withdrawal of that presidential candidate from contention for that party's nomination or by written release of that presidential candidate to the chairman of the national convention whichever is earliest.

(3) If a vacancy occurs in the elected delegation, it shall be filled by an alternate selected by the caucus for the candidate to whom the original delegate was committed, and the alternate shall be required to meet the same qualifications of the delegate being replaced.

(4) A person who is a delegate to a state or county convention of his political party only by virtue of being

a member of the state legislature in such capacity shall not participate directly in the process of selecting delegates to his political party's national convention. Neither this provision nor any other provision of law shall be understood to restrict the opportunity of any registered elector in the state, including all public officials, to be elected as a delegate to any county, district, state, or national convention of his political party.

(620) C.L. 168.620 Filings with secretary of state; publication. Public Act 60 (72), added section, I.E.

Sec. 620. All rules, procedures, allocation of national delegates, additional qualifications for delegates and delegations of authority, by any state central committee under the provision of this act relating to presidential primary elections, shall be filed with the secretary of state no later than December 31 of the year preceding the presidential election except that in 1972, such rules, procedures, allocation of national delegates, additional qualifications for delegates or delegations of authority shall be filed with the secretary of state no later than the second Friday of March. If the state central committee or any political party, for which a presidential primary is to be held under section 613, fails to file any rules, procedures, allocation of national delegates, additional qualifications for delegates and delegations of authority necessary for the appropriate implementation of this act relating to presidential primary elections, the secretary of state forthwith shall issue them to the extent necessary. The secretary of state shall insure that all such rules, procedures, allocation of national

convention delegates, additional qualifications for delegates, delegations of authority and the general provisions of this act relating to the presidential primary election shall be widely publicized in the mass communications media and made easily available to the public.

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